Office-Supreme Court, U.S.
FILED
OCT 2 1957
JOHN T. FEY, Clerk

No. 57.2

In the United States Court of Appeals

For the Seventh Circuit

No. 11903

MINNIE KRANTMAN,
Plaintiff-Appellant,

vs.

LIBERTY LOAN CORPORATION, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable J. S[illegible]n Perry, Trial Judge.

APPENDIX TO APPELLANT'S BRIEF.

IRWIN J. ASKOW
RICHARD JAMES STEVENS
BURTON H. YOUNG
7 South Dearborn Street
Chicago 3, Illinois
Attorneys for Plaintiff-Appellant

The Scheffer Press, Inc.—ANdover 3-6850

INDEX

PAGE

Statement of Proceeding Below 1-3

Decree 37

Opinion 38

Findings of Fact and Conclusions of Law 40-59

Notice of Appeal 60

Abstract of Testimony of Witnesses:

- Gillies, Coll 5
- Boutell, Wayne Struve 5
- Levy, I. H. 7-13
- Maland, Oswald 15
- Krantman, Minnie 17
- Lichtenstein, David B. 19-29
- Costigan, Edward J. (Deposition) 31-35

Certificate of Clerk 61-64

APPENDIX.

STATEMENT OF PROCEEDING BELOW.

Date Description.

10-20-54—Proceedings instituted by filing of Complaint.

10-27-54—Order by Judge Perry for leave to plaintiff to amend Complaint heretofore filed by attaching the verification of Minnie Krantman.

11- 9-54—Plaintiff's Supplemental Complaint filed.

11-10-54—Order by Judge Perry to extend the time to file Supplemental Complaint and Motion, Answer or other pleadings to original and Supplemental Complaint.

12-10-54—Motion to Dismiss filed by Liberty Loan Corporation.

12-10-54—Motion to Dismiss filed by certain other defendants.

3-15-55—Order by Judge Perry insofar as the Complaint and Supplemental Complaint embody the plaintiff's request for individual relief, they be and are dismissed.

3-15-55—Order by Judge Perry that Motion of several defendants to Dismiss be denied. Defendants to file pleading within 20 days.

3-29-55—Order by Judge Perry granting leave to defendants to file Motion to Reconsider Order of March 15, 1955, denying defendants' Motion to Dismiss.

3-29-55—Motion of defendants filed pursuant to Rule 12(h) of the F.R.C.P. to reconsider the Court's Order of March 15, 1955 for want of jurisdiction.

5-16-55—Order by Judge Perry that Motion of defendants for reconsideration of the Court's Order of March 15, 1955 be and it hereby is overruled and that all defendants file an appropriate responsive pleading within 20 days.

5-27-55—Motion of defendants to strike allegations and prayers of the Complaint filed.

6-24-55—Order by Judge Perry to strike out the words "on her own behalf" in paragraph 1 of Complaint and remainder of Motion to Strike denied. Defendants given 30 days to file Answer.

7-25-55—Answer of defendants filed.

9-22-55—Amendment to Complaint and Supplemental Complaint filed.

9-22-55—Brief in support of Amendment to Complaint filed.

10-12-55—Brief in opposition to Amendment to Complaint and Supplemental Complaint filed.

10-21-55—Plaintiff's Reply Brief filed.

11-10-55—Order by Judge Perry overruling contentions of defendants without prejudice to defendants raising the same matters at the close of all the evidence.

11-25-55—Answer to Amendment to Complaint and Supplemental Complaint filed.

1-12-56—Order by Judge Perry to Dismiss Anthony A. Buford, William A. Gerard and Allen J. Nix as defendants on Motion of plaintiff.

6-15-56—Cause called for trial. On Motion of Richard James Stevens order by Judge Perry that Louis Shulman be admitted to practice in this Court for the purpose of participating as

counsel for plaintiff in the trial of this cause. Opening statements heard. Evidence heard for plaintiff in part and cause continued to June 18, 1956 for further trial.

6-15-56—Depositions of Edward J. Costigan, Minnie Krantman and Louis Shulman filed.

6-18-56—Further evidence heard for plaintiff and cause continued to June 19, 1956.

6-19-56—Further evidence heard for plaintiff and cause continued to June 20, 1956.

6-20-56—Further evidence heard for plaintiff and plaintiff rests.

On Motion of defendants to Dismiss, Order by Judge Perry that the cause be dismissed on its merits. Defendants to submit proposed findings of fact and conclusions of law on or before July 10, 1956. Plaintiff to file objections thereto within 20 days thereafter, taken under Rule 13. Decision set for September 4, 1956. Plaintiff's Motion for new trial taken under advisement.

6-27-56—Order by Judge Hoffman that leave be given to plaintiff to file instanter a Motion for a New Trial. Said Motion is set for hearing September 4, 1956 at 1:30 P.M. before Judge Perry.

6-27-56—Motion for New Trial filed.

9- 4-56—Objections to defendants' proposed findings of fact and conclusions of law filed.

9- 4-56—Order by Judge Perry denying plaintiff's Motion for a New Trial. Findings of fact and conclusions of law entered.

9-20-56—Notice of Appeal filed by plaintiff.

9-20-56—Cost Bond on appeal filed.

10- 1-56—Clerk's File Copy of Transcript of Proceedings had on June 15, 18, 19 and 20, 1956, before Judge Perry filed by official court reporter.

ABSTRACT OF TESTIMONY OF WITNESSES.

COLL GILLIES, called as a witness on behalf of the plaintiff, being first duly sworn was examined and testified as follows:

Direct Examination by Mr. Stevens. (Tr. 41)

My name is Coll Gillies. I live at 2101 Lunt Avenue, Chicago. I am Vice President of The First National Bank of Chicago. I was served with a subpoena to produce the collateral trust agreement involving The First National Bank and Key Finance Co. (Plaintiff's Ex. 1) This document was executed in my presence on the date it bears. (Tr. 42) Among the contents of my file I have a certified copy of the Articles of Incorporation of the Key Finance Corporation (Plaintiff's Ex. 2) (Tr. 43) We do not have any stock certificates of Liberty Loan Corporation on deposit. On February 25, 1955, they were returned to the depositors. (Tr. 44) The trust agreement terminated on that date by payment in full of the notes that were due to Levys from Key. (Tr. 45)

WAYNE STRUVE BOUTELL, called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stevens. (Tr. 66)

My name is Wayne Struve Boutell. I live at 1002 North Gary Court, Wheaton, Illinois. I am a certified public accountant with Alexander Grant & Co. I am a principal. At the present time I am manager of the Tax Department. I received my license as Certified Public Accountant in November, 1948, and have been engaged in the profession

of Public Accounting 11 years. I had schooling both at the University of Southern California and University of Chicago. I hold a Bachelor degree, a Master's degree and a C.P.A. My accounting experience in general is dealing with corporations of various types and sizes in the corporate and tax field. (Tr. 67) That involves the analysis of financial statements, balance sheets, profit and loss statements. I examined, at Mr. Stevens' request, the proxy statement, Plaintiff's Exhibit 3, in some detail. We made a number of charts as a result of our computations. The information was taken from the proxy statement. (Tr. 68) * * * In addition to examining the proxy statement I also examined in detail the Baumann Finney & Co. audit of Liberty Loan Corporation for the year ending December 31, 1954, Plaintiff's Ex. 20. The Baumann Finney & Co. report showed that some of the assumptions in the proxy statement were not entirely carried out by the stockholders, and thus there was some variation between the proxy statement and what actually occurred. (Tr. 79) Generally speaking, the majority of preferred shares were converted into common shares. There were, however, approximately 5604.6 shares that were redeemed rather than converted into Class A stock. 58,000 of the former preferred stock shares were converted to Class A. I have made computations of the balance sheet of Liberty Loan Corporation, first as of June 30, 1954, to show the exact number of shares that existed and the equity attributable to each group of shares as of June 30, 1954. (Tr. 80) The first paragraph labelled "1" of Plaintiff's Ex. 23, are computations made by me based upon the June 30, 1954 audit included in the proxy statement, Plaintiff's Ex. 3. (Tr. 81) The figures shown under the Equity column show the equity which is properly attributable to the shares that are indicated in the left-hand column. The preferred stock is set out at redemption value—$16.00

per share; the common Class A and Class B are set out at book value. The part headed "2" on the first page of Plaintiff's Exhibit 23 contains my computations, taking the June 30, 1954 figures and the actual redemptions that were made during the six months ended December 31, 1954 and adding the employees' stock. It is a recomputation of the book value of Class A remaining and the Class B, and sets out the employees' stock (Tr. 82) purchase shares and the book value per share. The computations appearing under Section 2 of Plaintiff's Ex. 23 were taken directly from Exhibits 3 and 20. The item marked "3" on the second page contains computations made by me, based upon information contained in the Baumann Finney & Co. report as of December 31, 1954. The number of shares of stock appearing under the column headed "Shares" is actually the number of shares outstanding as of December 31, 1954. (Tr. 83) The figures shown under the column "Equity" are computations made by myself in a proper manner from an accounting viewpoint. The Book Value per Share column at the right-hand side are computations made by me on information contained in the December 31, 1954 Baumann Finney & Co. audit, Plaintiff's Ex. 20. (Tr. 84) I would say that I have had experience with corporations having around 4,000 stockholders. That includes the examination of corporate minutes and corporate structure. I have come in contact professionally with twenty-five or more of such corporations. (Tr. 89) I have an opinion based upon my connection with those corporations and upon my professional training and background as to approximately the percentage of holding of common shares which would constitute effective control of a corporation with about 4,000 stockholders. (Tr. 90) My opinion is that somewhere in the range of 30% would constitute effective control. (Tr. 91) In connection with assisting counsel in this pro-

ceeding, we met to discuss the case before the filing of the original Complaint. We had several meetings. I studied material and discussed various accounting and financial aspects of the case and made a number of calculations. After the Complaint was filed I suggested that we prepare these charts. (Tr. 92)

Cross Examination by Mr. McNally. (Tr. 92)

I have not been paid for any services. I did not have anything to do with the suit American Investment Company v. Lichtenstein (Tr. 93). That suit was mentioned in the proxy statement. I have not worked on other cases of this kind in connection with Mr. Shulman. You are not to understand that I did this work purely on a contingent basis. I am going to render a bill to Mr. Stevens, attorney for the plaintiff. (Tr. 94) I did not talk to anyone else about this case other than Mr. Stevens or his firm. I did not find any misrepresentation as to accounting matters in the proxy statement. I read the proxy statement and as far as my qualification goes, I did not find any misrepresentation (Tr. 95) I would have to check my records to know how long prior to October 20, 1954, I had been working on the case. I keep a time record of my work. I did not bring it with me. I was not prepared to prove up accounting fees. (Tr. 96)

I. H. LEVY, one of the defendants called as a witness at the instance of the plaintiff, under Sec. 43, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stevens. (Tr. 201)

My name is I. H. Levy. I live at 3500 Lake Shore Drive, Chicago, Illinois. I am Chairman of the Board of Directors of Liberty Loan Corporation. In November of 1953 I had some discussions with David Lichtenstein about the

sale of Liberty to American Investment Co. (Tr. 202) I had a discussion with Lichtenstein in February of 1954 at the LaSalle Hotel in Chicago (Tr. 203) I told him that if there was a chance of him leaving American I would like to discuss with him his coming into Liberty. (Tr. 204) In March I went to St. Louis and talked to Mr. Lichtenstein at my hotel. (Tr. 205) He told me he couldn't make any kind of commitment. Probably in the latter part of March, 1954, I had a conversation with Lichtenstein at his home when Mr. Costigan was present. There was discussion of the sale of half of my shares of stock but he wasn't interested in it. (Tr. 206) On May 26th I first had a discussion with Lichtenstein in Chicago about a stock option plan. (Tr. 207) That conversation took place at the Chicago Club in the presence of Mr. Costigan, Mr. Nix and Mr. Harris. (Tr. 208) There was a discussion of the reclassification of the 7500 B stock into 100,000 shares of common. (Tr. 209) In March, 1954, I had a small discussion with Mr. Nix, Mr. Harris, Mr. Thompson and Mr. Gerhard in Mr. Nix's office, that I had seen Mr. Lichtenstein and he told me he wasn't interested as long as he was with American. I attended a meeting in Mr. Maland's office with Mr. Costigan and Mr. Harris and Mr. Lichtenstein and Mr. Maland. (Tr. 211) on May 27, 1954.

There was a discussion of the reclassification of the Stock and Mr. Maland advised me that I (Tr. 212) should not be a party in any way to any reclassification of the B stock and the deal was off. Maland said "I think you should go ahead and merge with Seaboard". He did not say anything about the advisability of a merger if there was going to be a reclassification. (Tr. 213) I had had previous negotiations with Seaboard Finance Corporation from March to the end of May. The reclassification of 7500 shares of B stock into 100,000 shares of A stock was

never discussed with Seaboard. I had negotiated with other corporations for the sale of Liberty's B stock. (Tr. 214) In 1951 I had negotiations with Family Finance. Mr. Dolliver, President of Family Finance, said they were willing to pay $1,800,000 for the B stock and then merge with Liberty. The arrangement did not contain a reclassification of B shares. (Tr. 215) Mr. Barnes of American Investment Co. talked to me about the same time concerning the purchase of the B stock at a price of $1,700,000. The deal did not go through. They had difficulty with Domestic Finance and called it off. (Tr. 216) It did not involve reclassification of B stock. In November, 1953 Lichtenstein and Costigan discussed with me at American Investment Company the purchase of the B stock for $1,500,000 and the exchange of 5/6 of a share of American for 1 share of Liberty. (Tr. 217) That deal did not go through and did not involve the reclassification of the 7500 B shares. We felt the A stockholders should get 1 share for 1 share. The members of my family who own B stock were my wife (Tr. 218) Virginia K. Levy, my daughter Harriet Levy, my brother Harry H., (Tr. 219) my deceased sister's husband Louis Strilky, my brother's wife Margaret and her son John. (Tr. 220) Under the option agreement of July 8, 1954, I was to receive approximately $271.00 per share for my stock. When we first had the original deal with American, Strilky said he would like to have $300,000 for his stock. (Tr. 221) I did not inform him of the price I was getting for my shares.

I purchased 9 shares of B stock from Fairman & Harris after the option agreement of July 8th (Tr. 223) at $230.00 per share. (Tr. 246) I purchased 43 shares of B stock (Tr. 223) in March and April 1954 at $20.00 or $21.00 per share. (Tr. 246) I still own the common stock that I received in the reclassification for the 43 shares (Tr. 224) and for the 9 shares. As Chairman of the Board of

Directors of Liberty Loan Corporation my duties are many. (Tr. 225) We have lines of credit of over $29,-000,000 with banks. We are borrowing $6,500,000 from insurance companies (Tr. 228) * * * I go around to banks and they ask me questions about our business. I also call on other banks in getting lines of credit. (Tr. 227) I saw Harrington of the Second State Street Trust Company of Boston which increased our line of credit from $800,-000 to $1,000,000. Mr. Woodcock and I had personal conferences with officers of the First National Bank, Main State Bank, Drovers National Bank, National Security Bank, Uptown National Bank, Chicago National Bank, Livestock National Bank, which increased our lines of credit. (Tr. 229) I write to Mr. Lichtenstein from time to time and tell him the banks I have called on.

I first talked to Lichtenstein about my salary about the time the options were signed. (Tr. 230) He wanted to be sure that the top managment would continue on. (Tr. 231) Strilky, H. H. and I were willing to take a reduction in salary to bring these new men in without increasing the overhead.

Since January of 1955 Strilky's duties were supervisory of the industry's operations. He had charge of the entire Illinois operation. He was working closely with Gerard (Tr. 232) who came here with Lichtenstein. My brother H. H. handled the collections. (Tr. 233)

I have a private office at 111 West Jackson (Tr. 234) I am in the office every day from 9:30 to 5:00.

Mr. Costigan was somewhat active in the negotiations between me and Mr. Lichtenstein. He was a stock broker connected with Edward D. Jones & Co. (Tr. 235)

Prior to July 20, 1954 Lichtenstein said he would like to have four of the directors resign so they could be replaced by Mr. Lichtenstein's nominees. (Tr. 236) My brother H. H. Levy, Frederick Deibler, Mr. Strilky and

Mr. Nerad resigned and then Mr. Lichtenstein elected his men to the Board of Directors and then had management control of the Company. (Tr. 237)

D. S. Nerad was secretary and treasurer of the corporation at the time I was in control. Nerad received 1000 shares of stock under the Employees' Stock Purchase Plan. Nerad left Liberty at the end of 1954 or the first part of 1955. (Tr. 238)

Mr. B. Burns had 300 shares under the Employees' Stock Purchase Plan. He is no longer with Liberty.

Ruth Anderson, who was with Liberty, is no longer associated with it. (Tr. 239)

William L. Price, who received 100 shares under the Employees' Stock Purchase Plan, is no longer with Liberty. (Tr. 240)

W. H. Schaffer, who was with Liberty and who participated in the Plan, is no longer with Liberty. (Tr. 241)

At the meeting of July 20, 1954 I discussed some old employees that had been with Liberty for inclusion in the list and Mr. Lichtenstein selected some people who were coming into the corporation for inclusion in the list. (Tr. 242)

F. H. Thayer is still with the Company. (Tr. 244)

Arthur Strilky is the son of Louis Strilky. (Tr. 246)

As far as I know, no contract has been entered into between Liberty and any participant in the Employees' Stock Purchase Plan. (Tr. 249) Mr. Nerad returned his stock which he had purchased under the Employees' Stock Purchase Plan when he left the corporation. (Tr. 250) Mr. Burns still has the shares of stock he has acquired. Ruth Anderson still has her shares. The corporation has not entered into any contract of employment with David B. Lichtenstein. (Tr. 251) As of July 19, 1954 David B. Lichtenstein was not employed by any other concern. Salary for David B. Lichtenstein for the year 1955 has not been set. (Tr. 252)

On March 1, 1955 I was paid in full for the shares of stock I sold to Mr. Lichtenstein. (Tr. 255)

A few days before July 8, 1954 Lichtenstein informed Mr. Maland that they were forming Key Finance Corporation. Prior to July 8, 1954 I had only one conversation with Mr. Lichtenstein about the sale of my interest. (Tr. 256) In the early part of March, at Mr. Lichtenstein's home, with Mr. Costigan, there was a discussion on it and Mr. Lichtenstein said he could not enter into any kind of agreement as long as he was in the employ of American. (Tr. 259) I was living in Chicago at that time. I had no discussion with Mr. Lichtenstein in April of 1954. (Tr. 260) I had no telephone discussion with Mr. Lichtenstein about the sale of B shares before May 26, 1954.

On May 27, 1954 Mr. Maland advised me not to be a party to the reclassification of 7500 shares to 100,000 shares. Subsequent to that date, as Chairman of the Board of Directors, I voted to approve the reclassification of shares. At the meeting of November 3, 1954 I was one of the proxies designated by the stockholders for most of the shares of stock which were voted at that meeting. I was present at the meeting. (Tr. 261) Those proxies were all voted in favor of the merger and reclassification of shares, except those that indicated on the proxies that they wanted to vote against the merger and reclassification. Those proxies that were not designated one way or the other I voted in favor of the reclassification and merger as instructed. (Tr. 262) I voted my own 4945 Class A shares in favor of the reclassification and merger. I don't know whether voting for the merger was voting in favor of the reclassification of shares or not. (Tr. 264)

My wife Virginia voted 3039 Class A shares in favor of the merger by proxy. (Tr. 265)

The signature of "I. H. Levy" on plaintiff's Exhibit 24 was placed on the letter of September 21, 1954 with my authorization. I did not discuss the notice for the meeting of November 3, 1954 on the first page of plaintiff's Exhibit 3 with anyone (Tr. 266) and had nothing to do with sending it out (Tr. 267) or its preparation. (Tr. 268)

Four members of the Board of Directors who resigned July 20, 1954 were representing A stockholders and B stockholders. (Tr. 270) In my various dealings in connection with the sale of stock held by me and my family I did not deal with anyone except David B. Lichtenstein. Mr. Lichtenstein never dealt directly with any members of my family, but always dealt through me. (Tr. 271)

During the six-month period ending in June, 1956 the earnings will be in excess of $100,000 per month. (Tr. 273) The corporation moved its principal office from Chicago to St. Louis in the latter part of October, 1954. I continued to live in Chicago. (Tr. 274) Mr. David Lichtenstein's brother, Philip Lichtenstein, is President of the American National Bank of St. Louis. A lot of bankers know Mr. David Lichtenstein. He enjoys a fine reputation. (Tr. 275) I organized Liberty Loan Corporation. Central States Finance Corporation, a corporation which I controlled, received the class B shares of Liberty. (Tr. 276) Liberty Loan Corporation received $75,000 or $10 per share for the Class B stock when it was originally issued. (Tr. 277) Since Liberty was organized in 1932 it acquired 66 offices up until the time I resigned as President. None of those offices was acquired by means of a merger. One Michigan office was acquired in an exchange of stock. (Tr. 278) Neither H. H. Levy nor Mr. Louis Strilky moved to Missouri when Liberty moved its office. (Tr. 283) * * *

Cross Examination by Mr. Strachan. (Tr. 288)

Stock held by me and members of my family was voted in favor of the merger at the November 3, 1954 meeting. (Tr. 288) I was in favor of the reclassification of B stock into A stock as part of the merger. Central States Finance Co. was organized in June of 1923. Liberty was organized as its subsidary in 1932. Central States Finance Co. was dissolved in 1939 or 40 (Tr. 289) and I received the B stock of Liberty as part of that liquidation. My wife and I controlled Liberty from that time down to the sale of the B stock to Key. In the proposed merger with Seaboard the B shares of Liberty were to get 60,000 shares of $15 par Convertible Preferred stock which within one year could be converted into Seaboard common, (Tr. 290) share for share. At that time the market price of Seaboard common was $26 a share. (Tr. 291) The B stockholders of Liberty would have received common worth a little over 1½ million dollars in a non-taxable transaction. The Liberty A stockholders would have received 85/100 of a share for each share of A which at the then market would have been an equivalent of abont $22.10 a share. (Tr. 292)

Mr. Strilky continued to perform his usual duties as an employee of Liberty (Tr. 293) until he had another heart attack in April of 1955. H. H. Levy continued to perform his usual duties until his health failed in July of 1955.

Mr. Costigan and his family has several thousand shares of Class A stock. (Tr. 294)

Edward D. Jones & Co., between 1945 and 1952, distributed among its customers substantial blocks of Liberty Loan Convertible Preferred. In the transaction with Key there was no condition, restriction or commitment attached to the sale of B stock. (Tr. 296)

Cross Examination by Mr. McNally. (Tr. 296)

I knew, in voting as a Class A stockholder for the merger at the stockholders' meeting of November 3, 1954, that I was voting for reclassification of the B stock on the basis of 100,000 shares of new common. At that time I had approximately 15,000 shares of A. (Tr. 297)

OSWALD MALAND, called as a witness on behalf of the plaintiff, being first duly sworn was examined and testified as follows:

Direct Examination by Mr. Stevens. (Tr. 298)

My name is Oswald Maland. I live in Evanston. I am an attorney associated with the firm of Chapman & Cutler. I represent I. H. Levy in connection with the sale of his stock to the Key Finance Co. (Tr. 298) I recall a meeting in my office in May, 1954, at which Mr. Harris, Mr. Lichtenstein, Mr. Levy and I were present. At that meeting a proposal was made by Lichtenstein and his group to purchase part of the Class B Common of Liberty. I advised Mr. Levy that we had a deal pending to merge with Seaboard which I thought was legally sound, and I recommended that he not sell any part of his stock unless he sold it all. (Tr. 299) I stated that I thought there was a difference between recapitalization under the Delaware laws and a merger, and that under a merger proceeding, if a Class A stockholder objected, he could get a cash compensation for the fair value of his stock, whereas that was not true under the recapitalization as proposed. At that meeting there was no discussion of a merger with Metropolitan Loan and Investment Co. and Metro Finance Co. or any other company. (Tr. 300) There was a general discussion of the hazards of objections from the Class A stockholders in recapitalization.

Under the Delaware laws, if the vote favors a reclassification, a stockholder who does not wish to participate is required to take what the reclassification plan provides. I pointed out that that was not true under the merger statutes, that I thought the merger procedure was much fairer to a Class A Common stockholder and sounder from a legal standpoint. (Tr. 301)

Cross Examination by Mr. McNally.

I had been representing Liberty prior to this May 1954 meeting, ever since its organization. (Tr. 302) In the Seaboard deal Mr. Levy was to receive convertible preferred. It is my recollection that he was getting a million and a half and that it would be non-taxable. (Tr. 305)

Redirect Examination by Mr. Stevens. (Tr. 306)

Our firm did not assist in the preparation of the proxy statement and notice to stockholders for the November 3, 1954 meeting.

MINNIE KRANTMAN, plaintiff, called as a witness on her own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stevens. (Tr. 308)

My name is Minnie Krantman. I live at 235 Windsor Drive, Waterloo, Iowa. I quite often stay with my daughter Dina who lives at 101 Martin Road, Waterloo, Iowa. My husband Joseph is deceased (Tr. 309). Mr. Louis Shulman handled my husband's estate. My daughter's married name is Shulman. Her husband's first name is Herbert. Mr. Herbert Shulman is Mr. Louis Shulman's brother. That is my daughter's signature on Plaintiff's Ex. 35-C for identification. (Tr. 310) I have my bank account at Marshalltown, Iowa, in the Fidelity Bank. No

one's funds are in that bank account other than mine. My daughter does the business for me. She signed this check. (Tr. 311) She was authorized by me to sign checks from my personal account. The purpose of the check was to buy stock in Liberty Loan and a few others. I think that plaintiff's Exhibits 35-A and 35-B are the other stocks that check 35-C was in payment of. (Tr. 312) I talked to Mr. Shulman about bringing a lawsuit against Liberty Loan Corporation a couple of weeks after this check was cleared. (Tr. 313)

Cross Examination by Mr. McNally. (Tr. 313)

Mr. Louis Shulman's office is on Fourth Street (Tr. 313) Iowa City, Iowa. I have never been in his office. Harry Shulman is Louis Shulman's father. Harry Shulman is retired. (Tr. 314) Louis Shulman never talked about American Investment Company (Tr. 315) Mr. Shulman and I read the Complaint filed by me together. He explained what it was. I don't recall when. (Tr. 316) I recall my deposition being taken April 27, 1956 (Tr. 317) I don't remember what I said at that deposition. I signed the Complaint; I don't remember the date (Tr. 320), before it was filed. Mr. Shulman and my daughter, I think, were present when I read it over in my daughter's home in Waterloo. (Tr. 321) I don't remember whether I signed an affidavit that the allegations were true after the filing of the Complaint. (Tr. 322) I think I signed something after the suit was filed. Waterloo is in Blackhawk County. (Tr. 323) I don't know anything about the stock purchase plan or the reclassification of B stock, (Tr. 324) but I know there was a swindle and that I am here to protect the stockholders. I don't know if I ever knew anything about the reclassification of Class B shares. I don't know anything about compensation to Mr. I. H. Levy and his brother and Strilky. (Tr. 325) I never knew

about it. I read some of Plaintiff's Ex. 3 and my daughter explained what it meant. (Tr. 326) I don't remember when I and my daughter discussed Plaintiff's Ex. 3. My daughter got it through the mail. (Tr. 327) I discussed it with Mr. Shulman. He told me somebody wanted to get rich on the stockholders. (Tr. 328) The only thing I know is that it is a swindle. That's enough for me to know. (Tr. 329) I don't know of anything that wasn't disclosed in Plaintiff's Exhibit 3. I trust Mr. Shulman everything. He took care of everything since my husband passed away. My husband died in 1953. At that time I asked Mr. Shulman to invest some money for me in stocks. (Tr. 330) The next time I heard anything about making stock purchases was on September 16, 1954. I told him he should buy something that I should get a little income. That is all. (Tr. 331) When Mr. Louis Shulman told me on September 16, 1954 that he bought 25 shares of Liberty he did not at that time tell me that there was a swindle in connection with it. I don't remember the answer I gave on my deposition April 27, 1956. (Tr. 333) Mr. Shulman discussed the letter of September 1, 1954 from Quail & Co., brokers, to Louis Shulman after the suit was filed. (Tr. 339) I read a little. My daughter showed me the letter dated November 5, 1954 and I talked it over with her. (Tr. 340) Mr. Shulman told me that I could have the value of my shares fixed and get paid the cash amount for them. I did not want to sell. I bought it just because I wanted a little income. I did not buy it to sell and make money on it. I just wanted something to bring in a little money for expenses. No matter how much the stock might pay me I was not interested in that. (Tr. 341) All papers were signed in my daughter's home. (Tr. 342) That is my signature on the Amendment to Complaint and Supplemental Complaint. It was signed in my daughter's

home. I don't think any one was there other than my daughter. (Tr. 343) I don't remember if I raised my hand and swore when I signed it. (Tr. 345) I know that defendants' Exhibits 3 to 8 are my dividend checks. I cashed those checks personally. I bought groceries with the money. (Tr. 346) I never talked to any other stockholders of Liberty. (Tr. 347)

DAVID B. LICHTENSTEIN, called as a witness at the instance of the plaintiff herein, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Stevens. (Tr. 348)

My name is David B. Lichtenstein. I live in LaDue, Missouri, a suburb of St. Louis, Missouri. I am president of Liberty Loan Corporation. I first discussed the stock option plan with Mr. Levy before the May 27 meeting. It could have been in April of 1954. The first time the present form of the Employees' Stock Purchase Plan was discussed was when Mr. Dallstream suggested it (Tr. 350) in July of 1954. I heard Mr. Levy testify that he named some of the persons on the list of participants in the Employees' Stock Purchase Plan. I believe I named the balance of the persons on the list. (Tr. 351) I am not sure whether the list which is included in Plaintiff's Exhibit 8 was typed before the meeting of July 20, 1954. (Tr. 352) There was some talk about whether I. H. Levy or H. H. Levy or Mr. Strilky should participate in the stock purchase plan and the directors decided that they should not. (Tr. 353) My name on the list to the extent of 33,000 shares was included at my suggestion. My name as trustee for David B. Lichtenstein, Jr. for 11,500 shares was upon my written designation. David B. Lichtenstein is my son. The name "David B. Lichtenstein, trustee for Daniel B. Lichtenstein" for 11,500 shares

was upon my designation. (Tr. 354) The name of Mercedes D. Lichtenstein for 12,000 shares was included at my suggestion. She is my wife. In 1937 I, with my wife, gave 700 shares each of American Investment Company to these two trusts. The stock was worth six or seven thousand dollars at that time and all the increase has been made out of the trust. My wife has not worked for the last ten years. We have been married for thirty-some years. (Tr. 355) All of the money that she has made was by her own investments.

I have no contract of employment with Liberty. I don't believe in contracts of employment. They are only one-sided for the man who is going to be employed. There were no contracts in my business history except for those who were selling out and you wanted a non-compete. None of the other participants in the Employees' Stock Purchase Plan has entered into any contract of employment with Liberty. (Tr. 356) Some of the people who participated in the Employees' Stock Purchase Plan have left the employment of Liberty. There are 1300 shares that have been retained by employees who left. Miss Anderson retained 300 shares. (Tr. 357) Ruth Anderson, P. J. Dunne, William L. Price and W. K. Schaffer all left the employment of Liberty Loan and still have their shares. They had worked a great many years and were entitled to retain them. I left my employment with American Investment Company on May 24, 1954. I was Executive Vice President of the Company and its subsidiaries and the operating head of the Company. Donald Barnes was president of the Company. (Tr. 359) I am an attorney, not admitted in Illinois, but in the State of Missouri. I have not engaged in the actual practice of law except for Liberty. We have organized 100 subsidiaries and I have done that. I have taken care of the purchases that we have made, and I do the contracts in

connection with them. Key Finance Company was organized by my son. I did telephone C. T. Corporation and asked them to do it. (Tr. 360) I am not a stockholder in Key Finance Company. I am not on the Board of Directors or an officer. I have been present at some of the meetings Key Finance Company has held since its organization. I was present at the stockholders' meeting when they considered the proxy statement of Liberty. (Tr. 361) The Daniel B. Lichtenstein who owns 500 shares of stock in the Key Finance Company is my son. David B. Lichtenstein, Jr. who owns 542 shares is my other son. Mercedes D. Lichtenstein who owns 711 shares of Key is my wife.

Philip F. Lichtenstein who has 449 shares, is my brother. In all three cases it was their own money that was used to purchase the shares. (Tr. 362) June Pauline Cole, who has 31 shares, is my secretary. Lyle S. Woodcock, who has 357 shares, is one of the directors and Vice President of Liberty Loan Corporation. (Tr. 363) Anthony A. Buford, who owns 203 shares, is a director of Liberty. He is general attorney for Anheuser Busch. I talked to him about coming into Liberty and investing in the purchase of B shares of Liberty. I did not talk to August A. Busch, Jr. before he became a stockholder of 52 shares of Key, but Mr. Buford did. (Tr. 364) I talked to A. G. Clodius who owns 203 shares in Key, before he invested. Gratiot Equipment Company, which has 77 shares, is owned by George Herbst with whom I talked before his investment.

Dorothy H. Russell for 19 shares, Dorothy Herbst Russell for 19 shares and Dorothy Russell for 19 shares are all relatives of Mr. Herbst. (Tr. 365) I talked to Mr. John L. Wilson who has 52 shares of Key, before he invested in Key. Mary Frances Wilson who has 52 shares is John Wilson's wife. Key Finance Company

has not engaged in any business other than the purchase of shares of stock in Liberty Loan Corporation. (Tr. 366)

Before the notice of special meeting of stockholders for November 3, 1954, and the proxy statement accompanying it, were sent out, I went over them in some detail. (Tr. 368) I did not have any discussion with any one in connection with the fact that there was no mention in the notice of the reclassification of 7500 shares of Class B and 100,000 shares of Common. (Tr. 369) * * *

I dispute the fact that as a result of this merger the 7500 shares of B shares are increased in equity from $125,000 to nearly $1,400,000, based on the figures in the proxy statement, because nobody has the right to divide up the Company. (Tr. 376) One share of B stock before the merger had an equity of about $16.70. (Tr. 377) I dispute that the book value of 13⅓ shares exchanged for 1 B share would be about $188.00, because I don't think you can divide it. (Tr. 378) Key Finance Company signed a regular proxy form designating me, I. H. Levy and John Wilson as the proxies for the November 3, 1954 meeting. Mr. Levy, Mr. Wilson and I were present at that meeting. I acted as Chairman. Mr. Stevens was present at that meeting (Tr. 382) and mentioned that Krantman *v.* Liberty Loan Corporation was pending in the U. S. District Court.

I first discussed the possible merger between Liberty Loan Corporation and Metro Finance Company and Metropolitan Loan and Investment Company with some representative of those two companies about July 11, 1954, after the signing of the options of July 8, 1954. (Tr. 384) On July 20, 1954, at the Board of Directors meeting, I discussed my discussions with the Metro and Metropolitan people. At that Board meeting the number of shares which Metro and Metropolitan ultimately received was mentioned by me. (Tr. 385) I have no recollection

of discussing the reclassification of the B stock into a larger number of A shares earlier than June, 1954. Levy had tried to obtain executives for a number of years and had been able to get only men who were not able to accomplish much. I knew that unless executives could secure stock interest in it, which they cannot if it (Tr. 386) is controlled by one man, it would not mean anything to them over their life time. (Tr. 387) The B stockholders would never agree to eliminate the control by converting the B shares directly into A shares, share for share, although it could have been legally possible. (Tr. 388) The B stock could sell the assets. (Tr. 389) Compensation was paid to securities brokers to obtain favorable proxies of the Class A shareholders for the November 3, 1954 meeting. Compensation was paid after November 3, 1954. (Tr. 390)

Plaintiff's Exhibit 29 in evidence is the record of money paid to dealers on 173,091 shares of Common Class A stock for favorable votes. They were paid at the rate of 15¢ per share for favorable votes on the merger and Employees' Stock Purchase Plan. No dealers were paid for soliciting any votes that were opposed to the merger or to reclassification of stock or to the Employees' Stock Purchase Plan. (Tr. 391)

I first discussed the possibility of paying securities men for the solicitation of proxies in connection with the reclassification of stock in August, 1954.

The only thing I can recall ever saying to Costigan was that in the Ohio Finance deal, which occurred some five years previous, the dealers were paid for their work in soliciting, and that I presume the setup would have to be similar to what was done in Ohio Finance. (Tr. 394) This is a common practice.

Generally speaking, I never favored contracts of employment of a corporation, except where you can get

a non-compete agreement to protect the corporation. I was with one corporation nearly 28 years and no executive ever (Tr. 396) had one. My general policy was deviated from in connection with H. H. Levy and Louis Strilky because I could assure myself that they would not go in business and compete. (Tr. 396) I would say that during my period of association with American Investment Company the policies of American Investment Company were decided more by myself than by Mr. Barnes, except when it came to bank lines. Mr. Barnes always controlled the Board of Directors. He had the company before I came into it. (Tr. 397) Mr. Barnes and his family had about 20% of the common stock of American. (Tr. 398)

Prior to November 26, 1954, the President of Liberty operated as Chairman of the Board. (Tr. 399)

The difference between the 93,600 partially paid and assessable shares outstanding December 31, 1954, and the 87,762 partially paid and assessable shares outstanding as of December 31, 1955, shown in plaintiff's Exhibit 32, is the number of shares actually issued pursuant to the Employees' Stock Purchase Plan, on which $17.00 per share had been paid in full.

I recognize that prior to November 3, 1954 the Class B Shareholders had equal rights on liquidation to the Class A Shareholders, share for share. (Tr. 400) * * * I don't think that the book value or liquidation rights of the 100,000 new shares issued in exchange for the 7500 Class B stock would be $1,416,513. (Tr. 405) The restriction on the 100,000 shares would affect their market value. (Tr. 407) I think the figures would be correct if there were a liquidation, but we did not go into the company to liquidate it. (Tr. 409) I did not think it appropriate to mention the $1,416,000. (Tr. 410) Nowhere in the entire 65-page proxy statement is it shown that the value upon

liquidation of the 100,000 shares exchanged for the Class B shares would be approximately $1,400,000. I think it would be poor accounting to show it. (Tr. 411) There is also a change in the book value or liquidation value in the former Class A shares of stock as a result of this merger and reclassification. (Tr. 413) Before the merger the book value of the 449,606 shares of Class A would be $7,512,-016.26. After the merger there were 472,805 shares outstanding, not including the employees' stock, with a value of $6,699,661.02. (Tr. 419) The figure of 472,805 shares of stock included the shares of stock issued to Metro and Metropolitan (Tr. 422), so I could not take two comparable figures but I took the $7,500,000 figure and compared it to the $6,699,000 figure. (Tr. 423)

"Mr. Stevens: The control of the corporation is still in the hands of Mr. Lichtenstein. He testified that—

Mr. McNally: He has working control." (Tr. 425)

It is correct, as stated on page 9 of the proxy statement, that the basis of exchange of the Common stock of the surviving corporation for the capital stocks of the Metro and Metropolitan was determined largely by the respective book value and per share earnings of such stocks. (Tr. 426) The book value of the corporation is a factor if there is going to be a merger between one corporation and another. In the small loan business mergers or acquisitions occur with some degree of regularity. (Tr. 427) * * *

No agreement not to compete in the event I left Liberty was ever executed by me. I have received no pay from the Company. I will draw no pay for 1954. The Board of Directors can go back to any date but not before January 1, 1955. (Tr. 437)

Key Finance still owns the shares of stock it received in the reclassification. (Tr. 438) The shareholders of Key Finance Company are as follows:

Anthony A. Buford, 203 shares
August A. Busch, Jr., 52 shares
A. G. Clodius, 203 shares
June Pauline Cole, 31 shares
Alfred Fleishman, 22 shares
William A. Gerard, 357 shares
Gratiot Equipment Company, 77 shares
Daniel B. Lichtenstein, 500 shares
David B. Lichtenstein, Jr., 542 shares
Mercedes D. Lichtenstein, 711 shares
Philip F. Lichtenstein, 449 shares
Dorothy H. Russell, 19 shares
Dorothy Herbst Russell, 19 shares
Dorothy Russell, 19 shares
John L. Wilson, 52 shares
Mary Frances Wilson, 52 shares
Lyle S. Woodcock, 357 shares (Tr. 440)

Cross Examination by Mr. McNally. (Tr. 441)

The employees who have left the employ of Liberty were all old employees. We doubt whether Liberty could have sold the stock for $17.00 per share after paying commissions, because they had sold preferred stock for less and the company was not in as good a condition as when it sold the preferred. The price to the employees under the stock purchase plan was the approximate market value. (Tr. 442) The stock issued under the Employees' Stock Purchase Plan was restricted. The purchasers couldn't accelerate payments unless 90¢ per share was earned on all stock outstanding for a six-month period, and then the Board of Directors could accelerate the purchase. (Tr. 443) Dividends were paid on the proportionate amounts the purchasers had paid in. The purchasers could not sell the stock for thirty days after it was fully paid for. (Tr. 444)

None of the employees I brought in when I took over the management, who were under the stock purchase plan, have left Liberty. (Tr. 446) Every employee under the plan was given the right to designate other members of his family or family trust to take part of the shares. A number of corporations have such provisions for employees. (Tr. 447) If I sold my American Investment stock and paid my capital gain, I would have enough money to buy 68,000 shares under the stock purchase plan.

There were no agreements about the amount of my salary. If the Board of Directors should ask for a suggestion I hope that I will get the same as my basic salary with American Investment Company, of $72,000 a year. (Tr. 448) Mr. Levy's salary was $60,000 per year and that was reduced to $40,000 when we came in. (Tr. 449)

* * *

On July 20, 1954, a release was sent out by Mr. Levy to all the newspapers, stating that new management had come in and we intended to eliminate the B stock and that there would be approximately 650,000 shares outstanding after the B stock had been eliminated through a merger with some other company. This information was sent to Moody's, Standard & Poor, Wall Street Journal and Dow-Jones. Statements in those publications said that the 7500 shares of Class B Common stock of Liberty would be reclassified into 100,000 shares of new Common. (Tr. 451) On September 11th Moody's had the complete story, including the 100,000 shares of reclassification of the new Common for the 7500 shares of Class B. This was in Standard & Poor's on September 13, 1954. (Tr. 452) * * *

Starting July 20, 1954, we opened additional offices and put in a training program. On November 3, 1954, we had 79 offices. Thereafter, we gradually opened offices, moved and remodeled them. We instituted the purchase of sales

finance paper in about 100 offices on appliances and household goods. (Tr. 456) We now have 127 offices open. We have increased our bank lines from about $20 million to $29 million. We are negotiating with insurance companies for 8½ million dollars worth of senior notes. (Tr. 457) The insurance companies have about three times as much money as the common stockholders have in the business. They knew about the plan and merger. (Tr. 458) They get our audit reports. This plan was discussed with the insurance company that held our notes at that time and with all the major banks. None of them said we were committing a swindle and fraud, but complimented us. (Tr. 459) The banking institutions would not be interested in this company if anybody in it was committing a fraud. The accounts receivables increased from July 20, 1954 from about $20 million to $36,500,000 to date. According to Federal Reserve figures, from June, 1954 to March, 1956, industry has gone up 26% and we have gone up 67%. We have increased our number of accounts 71% and our outstandings 75%. (Tr. 460) Prior to July 20, 1954, Liberty was approximately thirtieth in the small loans industry. Now it is eighth or ninth in the number of offices, and maybe tenth as to accounts receivables. The market value is a little better than $32 (Tr. 461) at the present time for Common stock. The stock has done better market-value-wise than other companies. The stock is selling on about a 4.6% dividend basis, whereas most of the finance company stocks sell at around 5½% or 6%. (Tr. 462) There have been minor increases in other small loan companies market prices since July, 1954, but none that have come near the increase in Liberty. (Tr. 463)

Cross Examination by Mr. Strachan. (Tr. 464)

I participated in the negotiations between Levy and American Investment Company in 1950 and 1951. There

was not any discussion of the price per share, but American Investment Company was willing to pay $1,700,000 for the stock. (Tr. 465) In 1953 the price of $1,500,000 was under discussion for the sale of the Class B stock. The price was not acceptable to Mr. Levy.

There was no agreement that I. H. Levy, H. H. Levy and Louis Strilky were to be paid salaries as part of the purchase price of the B stock. (Tr. 466) There was no agreement that salaries were to be paid without substantial services being rendered to the corporation. Mr. Levy has done more than he testified to. He has negotiated three substantial purchases of accounts receivables. (Tr. 467) Last month he sold one-half million dollars worth of 12-year notes to an insurance company in Chicago. He has gone to banks in Chicago, Boston, New York, Philadelphia, Detroit and Cleveland and secured additional lines of credit. H. H. Levy, when he came into the company, had a department of eight employees handling collections. (Tr. 468) Later I gave him extra duties with respect to instructing men on collections. The duties I assigned to Mr. H. H. Levy were performed by him until his contract was terminated. (Tr. 469) His work was in Chicago where we have about 18 offices.

Mr. Strilky's work was to take care of a major portion of Illinois. He had a number of supervisors under him. He had a heart attack and was gone about a month (Tr. 470) and we agreed to a modification of his contract, under which he received 60% of the remainder due him, and he agreed not to compete with the company. His duties could be performed in Chicago. (Tr. 471)

We had no agreement as to the reclassification of the B stock into common stock in connection with the purchase by Key Finance. The sale was not subject to any condition whatsoever.

There are offices of Liberty in fifteen states. (Tr. 473)

Redirect Examination by Mr. Stevens. (Tr. 474)

When 1 share of employees stock is purchased for the payment of $1.00 out of $17.00, that share of stock has equal voting rights with every other share of common stock. The earnings per share on common stock in 1953 was $1.99. They are now earning on the basis of $2.19 per share as of May 31st. (Tr. 475) The Board of Directors could authorize an acceleration of the purchase of employees stock purchase shares under the current earnings. (Tr. 476)

My compensation with American Investment Company was more than the base salary. I was regularly granted a 15% bonus in a profit-sharing plan and a 15% cash bonus if the earnings justified it. As to my knowledge of market prices, it does not include such loan companies as Commercial Credit and C.I.T. Finance Corporation, which are not in my field. (Tr. 477) Seaboard Finance is partly in our field. I don't know the market prices of Seaboard Finance from 1954 to the present time. (Tr. 478) I think Beneficial has gone up about a dollar and Household has gone up and went down. American had a slight increase, but not a whole lot. Those are the three leading companies. (Tr. 479)

The deposition of EDWARD J. COSTIGAN, called as a witness at the instance of the plaintiff, pursuant to Rule 43(b) was read in evidence,

Direct Examination by Mr. Stevens. (Tr. 488)

My name is Edward J. Costigan. I live in St. Louis, Missouri. My occupation is investment banking with Edward D. Jones & Co. of St. Louis. I am presently a director of Liberty Loan Company. Edward D. Jones & Co. represents a substantial number of stockholders of Liberty more now than in 1954. (Tr. 489) I suppose some

of the Class A stockholders of Liberty relied upon Edward D. Jones & Co. for advice, and Edward D. Jones & Co. gave advice in connection with the merger of November 3, 1954 to Class A stockholders. (Tr. 490) It consistently gave advice in favor of the merger. (Tr. 49) $22,500 was paid in three securities concerns, including Edward D. Jones & Co., in connection with the Liberty merger. About $7500 of that amount went to Edward D. Jones & Co. in addition to the amount that was paid it for the actual solicitation of the proxies. (Tr. 492) For this Edward D. Jones & Co., worked hard in providing new management for Liberty in Lichtenstein, whom we consider the outstanding man in the small loan field. It also helped to restore voting power to the common stockholder and in the exchange of Class B stock for Common. (Tr. 493) It helped to provide information to stockholders so they could vote for or against the merger. (Tr. 494) Some salesmen could have presented the information in the proxy statement so that the stockholders would understand what was in the proxy statement. (Tr. 495) The average stockholder may or may not have understood clearly what the transaction was, simply by having the proxy statement sent to him. (Tr. 496) Some customers need to be guided, some don't. (Tr. 497) There has been no promise of additional compensation to Edward D. Jones & Co. (Tr. 498) * * * The $7500 to Edward D. Jones & Co. was decided on in September, 1954, as to the amount (Tr. 501)

There was one meeting with Mr. Lichtenstein and Mr. Levy in St. Louis in November, 1953, at the office of American Investment. (Tr. 502) Mr. Lichtenstein was then acting on behalf of American Investment as Executive Vice-President and Director. Mr. Levy wanted $1,800,000 for his 7241 B shares. Mr. Levy had hoped he could get two million for the stock. (Tr. 503) There were

other companies interested in Liberty over the years. Mr. Levy had negotiations with Seaboard Finance Company during 1954. The sales price of the B shares to Lichtenstein's group was $1,700,000. (Tr. 504) The first part of July, 1954, in a telephone conversation between myself and Mr. Lichtenstein, there was a very general conversation about salary for I. H. Levy, Mr. Strilky and H. H. Levy. (Tr. 505-510.)

I met with Mr. Lichtenstein and Mr. Levy in April, 1954 at Mr. Lichtenstein's home. (Tr. 511) There was a discussion of the sale of half of Mr. Levy's shares to Mr. Lichtenstein. (Tr. 511-514) There was a discussion of the requirement that the B shares be reclassified into 100,000 Common shares. (Tr. 514-515) There was some discussion of stock options to Mr. Lichtenstein. (Tr. 515-516) I met with Mr. Harris and Mr. Lichtenstein at the University Club before luncheon in the first week in May, 1954. (Tr. 518) I don't remember any discussion of a merger. (Tr. 521) Following the luncheon meeting, Mr. Oswald Maland, Mr. Lichtenstein, Mr. Harris, Mr. Levy and I met in Mr. Maland's office. Mr. Maland was representing Mr. Levy. Mr. Maland wanted Mr. Levy to sell all his B shares rather than half. (Tr. 522) What Mr. Maland wanted more than anything else was a merger with Seaboard. (Tr. 526) It is true, as I testified, before Judge Harper in court in St. Louis in April, 1955, that Mr. Maland was fearful that I. H. Levy would be subject to criticism by the A stockholders and he preferred him to get out completely rather than half. He was afraid of the Class A stockholders because a recapitalization would be required. The risk of recapitalization would have to be borne by the buyer rather than the seller. (Tr. 528-532)

On the train home to St. Louis I had a conversation with Lichtenstein about purchasing all the Class B shares

owned by Mr. Levy and his family and I offered to put some money into the transaction myself. (Tr. 532)

About May 26, 1954, Mr. Nix of Riter & Co., Mr. Harris of Fairman & Harris, Mr. Levy, Mr. Lichtenstein and I met at the Chicago Club. (Tr. 536) Mr. Nix was against the reclassification of 7500 B shares into 100,000 Common. (Tr. 537) Mr. Nix was opposed to Mr. Lichtenstein coming into the picture because it would have interfered with his Seaboard Finance deal. Mr. Nix was trading on the idea that 100,000 shares was too much. He used some figures like 50,000 or 75,000 shares as enough. (Tr. 539) In March, Mr. Lichtenstein and I had a meeting in his home. (Tr. 541) He said that there might be some compensation to dealers for soliciting proxies. (Tr. 542) I think I told this to Mr. Harris and Mr. Nix. I mentioned it to Mr. Nix in New York in March in the presence of Mr. Levy at the office of Riter & Co. (Tr. 542) It could have been at our first meeting in March, 1954, between Mr. Lichtenstein and me that Mr. Lichtenstein said it was necessary to reclassify the B stock in order to put the voting power into the hands of the A stockholders and to provide management, and that he would not have put up $1,700,000 to come into the Company without the idea of reclassification. (Tr. 544) At the Chicago Club in the latter part of May, 1954, I told Mr. Nix that in order to provide outstanding management, Lichtenstein would not come in unless this B stock were out of the way and the voting power was in the hands of the Class A stockholders; that you would never attract good management into the Company with the capitalization the way it existed, so that in order to have Mr. Lichtenstein pay $1,700,000 and come out, you had to have 100,000 shares which was about the market value of the other stock. (Tr. 546) Mr. Harris was lukewarm to the reclassification of 7500 shares to 100,000 shares at the meeting at the Chi-

cago Club. He was in hopes that there might be a lower figure than 100,000 shares. (Tr. 548) Allen J. Nix was a Director of Liberty before July 20, 1954. (Tr. 549) He was re-elected at the next annual meeting and is a Director now. I was a spectator at the Board meeting of July 20, 1954, and elected a Director on November 3, 1954. (Tr. 551) * * *

Cross Examination by Mr. McNally. (Tr. 555)

My wife and I owned Class A stock years prior to July of 1954. Jones & Co. had sold 25,000 shares of Liberty to customers. (Tr. 556) My interest in getting in the picture was primarily to provide management for Liberty, which I thought was sorely needed. Lichtenstein in the early part of 1954 was on leave of absence from American Investment Company. I did everything I could to try to get him into the management of Liberty because I consider him the outstanding man in the industry. My opinion of Lichtenstein is supported by others interested in the small loan industry. (Tr. 557) Investment men and commercial bankers in the St. Louis area highly regarded and respected David Lichtenstein. (Tr. 558) I am referring to his outstanding managerial ability, establishing training programs, opening new offices. Our brokerage concerns are selling substantially more Liberty stock than before—possibly 75,000 shares are in the hands of our customers. (Tr. 560)

Cross Examination by Mr. Strachan. (Tr. 561)

Our family has increased its holding in Liberty common since the merger. Mr. I. H. Levy has continued to be active in the Company's business. He calls on various commercial bankers who loan him money; he attends conventions, (Tr. 561) keeps up his contacts. He is watchful for

any business deal that Liberty might make in the acquisition of another finance company. He is a valuable man for Liberty. He has been elected and re-elected Chairman of the Board. The effect of the announcement of Mr. Lichtenstein's joining the organization had a strong upward effect on the market of Class A stock. (Tr. 562) The reclassification did not adversely affect the market price of the stock. (Tr. 563)

Redirect Examination by Mr. Stevens (Tr. 564)

Prior to the merger meeting of November 3, 1954 I and my relatives owned about 4,000 shares which were voted in favor of the merger. There were some stockholders of Class A stock for whose vote brokers did not receive 15¢ per share. (Tr. 566) Before Mr. Lichtenstein came into Liberty the receivables were going off a little. (Tr. 568) The Company was not showing the growth that we wanted. In this period I. H. Levy was in effect the management of the Company. (Tr. 569) Our organization was not deep enough. Mr. Louis Strilky and H. H. Levy were members of management that conducted Liberty up to the time that Mr. Lichtenstein was managing head. (Tr. 570)

Edward D. Jones & Co. has been recommending the purchase of Liberty Loan stock to its customers. (Tr. 572) Lichtenstein's coming into the Company was in the press July 20th and in Dodge Service and Moody's Manual, Standard & Poor certainly in August. (Tr. 573) The reclassification was in Moody's by the middle of August. (Tr. 574) In three or four cases other offices were acquired by Liberty by some method other than the merger since November 1, 1954. (Tr. 578)

Recross Examination by Mr. McNally. (Tr. 578)

I favored the plan including the merger, the reclassification of stock and the Employees' Stock Purchase Plan right from the beginning because we wanted to provide management for Liberty and Lichtenstein was an able man and we thought it would be a great thing for the Class A stockholders. Compensation was very secondary. (Tr. 579) I felt a loyalty to quite a few customers of mine who owned Class A stock in Liberty.

Recross Examination by Mr. Strachan. (Tr. 580)

Up until the first part of September I didn't know what, if any amount I would receive as compensation. I thought by having Lichtenstein in with the personnel that he would have, there would be a chance for terrific growth, whereas if Liberty went into Seaboard, it would be getting into a mature company. (Tr. 581)

172

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—No. 54 C 1537) * *

DECREE.

This cause having come on for trial and the Court having heard the evidence presented by the Plaintiff on the issues in the case, and the Plaintiff having completed the presentation of her evidence and rested, and the Defendants and each of them, without having waived their right to offer evidence in the event their motion be not granted, having moved for a dismissal on the ground that upon the facts and the law the Plaintiff has shown no right to relief; and the Court having heard the arguments of counsel and being fully advised in the premises;

173 It Is Hereby Ordered, Adjudged and Decreed that:

1. This action be and it is hereby dismissed upon the merits for want of equity at Plaintiff's costs;

2. Jurisdiction be and it is hereby reserved by this Court for the sole purpose of making findings of fact and conclusions of law; and

3. The Court orders and directs Defendants on or before July 10, 1956 to submit proposed findings of fact and conclusions of law and that Plaintiff may file objections thereto within 20 days thereafter; such proposals and objections to be submitted under Rule 13 of this Court and heard on September 4, 1956 at 1:30 P.M.

Enter:

J. S. Perry
Judge

Chicago, Illinois
June 20, 1956

OPINION

663 The Court: Gentlemen, when I have a case before me that involves an individual or a small person and powerful persons, corporations or individuals, I realize that very often this is perhaps the court of last resort for the one without too much financial capacity. So I proceed with great care.

The same is true if I have two persons before me, neither of whom will be able to or will likely be able to appeal the case.

When this case came in here it appeared to me to be such a case. I read the complaint, I considered the motions that were made in the beginning, I considered the briefs that were submitted on the motions for summary judgment on the pleadings that were presented, I considered Mr. Dallstream's very able brief, that of Mr.
664 Hurd— at least the briefs of those firms, involving those gentlemen.

At that time, upon considering them I was almost persuaded that this case should then and there be dismissed. However, because of the nature of it, the charges and the seriousness of the charges, I felt there should be a hearing, and while probably I might legally have granted the motions, or should have granted the motions in the beginning, I felt that this case should be tried and I set it down for trial.

I have now heard the plaintiff's case, and I believe the plaintiff has had her day in court, I believe the plaintiff has failed to prove her case, and I think—I don't know that there need to be any findings of fact and conclusions of law in this case, but there is in the evidence here the work of Mr. Dallstream's firm. I have forgotten the exact name of it, Dallstream, Schiff—I should remember Mr. Schiff, he was one of my law teachers, but I have forgotten the full name of the firm—but if there is a kind of an innuendo or some sort of criticism that they did get out of this case because of their representing the purchasers in
665 this case, if they did feel that they should get out of this case because there was something they did wrong, I want the record clear that this Court has not been able to find anything wrong with the manner in which those estimable gentlemen handled this proceeding before it came to this court, nor during the time they were representing their clients here.

666 And I don't find anything wrong, if there is any indication as to the firm of Chapman & Cutler and Mr. Maland, who testified here, I don't find anything wrong with their conduct.

I don't find anything that would indicate that The First National Bank or its officials have in any way committed any breach of good etiquette.

I just don't see anything, as far as all of those organizations, firms and individuals are concerned, but proper and

ethical conduct. I think it is only fair for me to say so inasmuch as the record appears as it does.

It seems to me that the plaintiff who has been here has demonstrated by her testimony herself that she didn't know very much about this matter, and she has certainly not been hurt. She can sell her stock at a profit.

I am impressed by the fact that from the evidence as I see it, and from my common-sense understanding, I am convinced that this 7,500 shares of B stock was worth a great deal more—I don't know whether it was worth $1,-
700,000 or $2,000,000 or $1,000,000, but I know from my
667 knowledge that it was worth a great deal more, and a very substantial amount more, share for share. I don't know that the 13⅓, or whatever the ratio was, is the correct ratio, it might have been that 10 would have been a fairer ratio if I were determining it, it might have been 15, it might have been 5, but it is worth a substantial amount.

And it is my judgment that this Court cannot substitute its opinion and its judgment for that of the board of directors, where more than 90 per cent stockholders were there.

If this were a case where the record shows that there was 7,500 Class B stock that had voting rights, and the rest, the A stock or the other group of shares, the large number, also had voting rights, and there was a very insignificant difference such as a one per cent rate, or something like that, and there was a great disparity in the value—and also taking into consideration the stock market value, the quoted and the bid values, if there was something that appeared on its face or by competent evidence to show
that the corporation itself had been wronged, I would
668 feel that this was a case for the Court's interference.

Under the circumstances the motion is granted, the motion to dismiss at this time is granted for and on behalf of each of the defendants. That is the order of the Court.

190

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—No. 54 C 1537) * *

DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Now come the Defendants in the above entitled cause by their respective attorneys of record, and submit the attached findings of fact and conclusions of law, and respectfully request that the Court make and state the same as the Findings of Fact and Conclusions of Law of the Court in this action.

Andrew J. Dallstream
Fredric H. Stafford
Dallstream, Schiff, Hardin,
Waite & Dorschel
Attorneys for Defendants

D. J. Harris and David S. Nerad
Thomas C. Straghan, Jr. and
Walter I. Deffenbaugh
Attorneys for Defendant
I. H. Levy

Martin J. McNally and
Nash, Ahern & McNally
Attorneys for Defendant
David B. Lichtenstein and
Lyle S. Woodcock

John F. Cashen, Jr.
Attorney for Defendant
Liberty Loan Corporation

191

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—No. 54 C 1537) * *

This action having been tried by the Court without a jury, and the Court having sustained the motion of the Defendants to dismiss upon the merits after Plaintiff completed the presentation of her evidence,

The Court does hereby make the following Findings of Fact and does hereby state the following Conclusions of Law:

FINDINGS OF FACT.

1. Minnie Krantman, Plaintiff, is a resident and a citizen of the State of Iowa. Defendants I. H. Levy and D. J.
192 Harris and David S. Nerad are residents and citizens of the State of Illinois. Defendants David B. Lichtenstein and Lyle S. Woodcock are residents and citizens of the State of Missouri. Defendant Liberty Loan Corporation is a Delaware corporation and a citizen of that State. The amount in controversy for which Plaintiff sues derivatively in the right of and for the benefit of the Defendant Liberty Loan Corporation and the aggregate amount in controversy for which plaintiff sues as a representative of all former Class A common stockholders of said corporation each exceeds, exclusive of interest and costs, the sum of $3,000. There was no collusion between the plaintiff and any of the defendants to confer jurisdiction on this Court of this action.

2. Minnie Krantman, the plaintiff herein, through her attorney, Louis Shulman, placed an order with a broker to purchase 25 shares of Class A common stock of Liberty Loan Corporation (hereinafter called "Liberty") on September 16, 1954. On October 18, 1954 Liberty issued its certificate for said shares in the name of plaintiff. On

October 20, 1954 plaintiff filed her Complaint herein; a Supplemental Complaint was filed November 17, 1954; and an Amendment to Complaint and Supplemental Complaint was filed September 12, 1955.

193 3. Liberty was organized under the laws of Delaware in 1932 and has since been engaged in the small loan business. From then to and including November 3, 1954, it had outstanding both Class A common stock and Class B common stock, and also from time to time preferred stocks which were convertible into shares of Class A common stock. On November 3, 1954, there were outstanding 537,617 shares of Class A common stock held by about 4,000 widely scattered investors and 7,500 shares of Class B common stock, of which 7,241 shares (being approximately 97%) were owned by Key Finance Company.

4. Prior to November 3, 1954, the charter of Liberty provided that after the payment of or provision for full dividends on outstanding preferred stock, any dividends declared and paid on the Class A common stock and the Class B common stock should be declared and paid share and share alike. Also prior to November 3, 1954, the charter provided that upon liquidation after payment of or provision for the amounts due on the outstanding preferred stock the holders of the Class A common stock and of the Class B common stock were entitled share and share alike to all the remaining assets of the corporation. The charter further provided that no holder of any shares of 194 capital stock should have any pre-emptive right but that any unissued stock of any class might be issued and disposed of by the board of directors to such persons, firms, corporations or associations and upon such terms as may be deemed advisable by the board of directors in the exercise of its discretion, subject to restrictions and limitations not material here.

5. Prior to November 3, 1954, the charter of Liberty further provided that the management of all of the affairs, property and interests of the corporation was vested in a board of directors to be elected annually; that the holders of the Class A common stock voting as a class were entitled to elect a maximum minority of the total number of directors to be elected in any year and that the holders of the Class B common stock voting as a class were entitled to elect a minimum majority of said total number of directors; that upon a default equal to four quarterly dividends on preferred stock, the holders of the preferred stock voting as a class shold have the exclusive right to elect a maximum minority of the total number of directors but that the holders of the Class B stock would be en-
195 titled to continue to elect a minimum majority of such directors; and that as to any and all matters other than the election of directors, the voting power was vested solely and exclusively in the holders of the Class B common stock except as the General Corporation Law of Delaware and the charter otherwise require. Such requirements are not material to the issues in this action.

6. Originally, the Class B common stock of Liberty was issued to and held by Central States Finance Company, a corporation, of which I. H. Levy and his family group held the controlling stock. Upon the liquidation of Central States in 1939 or 1940, the Class B shares were distributed to its stockholders and since that time to and including July 19, 1954, I. H. Levy and his wife held more than one-half of such stock and through such ownership controlled Liberty.

7. On several occasions prior to July, 1954, I. H. Levy had negotiations with various companies concerning the disposition by him and members of his family of their Class B shares in Liberty. In 1951 Family Finance Cor-

poration was willing to pay $1,800,000 for the shares of Class B stock. In the latter part of 1950 and the early part of 1951 American Investment Company was willing to pay $1,700,000 for said shares of Class B stock. In 1953

American Investment Company again wished to pur-
196 chase said Class B shares and offered $1,500,000, which

amount was not acceptable to said I. H. Levy. Commencing in March, 1954, negotiations were had between I. H. Levy and certain directors of Liberty with representatives of Seaboard Finance Company, looking toward an exchange of stock of the two corporations under which the Class B shares of Liberty would be exchanged for 60,000 shares of a preferred stock of Seaboard, convertible on a share for share basis into Seaboard common stock within one year. Based upon the then market value of the Seaboard common stock, this would have produced something over $1,500,000 for the holders of the Class B common stock of Liberty but without any income tax being payable on the transaction by the holders of the Class B common stock. These negotiations and offers tended to establish a market price for the Class B common stock in the range from $1,500,000 to $1,800,000.

8. I. H. Levy, the chief executive officer of Liberty, in 1954 was reaching an advanced age. He was concerned about attracting and retaining excellent management for Liberty. The chief impediment to attracting such top flight management was the control feature of the Class B

common stock, which, by its very nature, rendered
197 the tenure of any such management insecure, being

dependent entirely upon the actions of the owners of the majority of said stock.

9. In 1954 Lichtenstein was the Executive Vice President of American Investment Company, which was then the third largest company in the small loan industry. He

was generally regarded as being one of the top executives in that field.

10. In February, 1954, Lichtenstein was granted a leave of absence from American Investment Company. Shortly thereafter, I. H. Levy met with Lichtenstein to discuss with him the possibility of Lichtenstein coming with Liberty. There were several such meetings down to May 26, 1954, during which the situation was explored generally but during which Lichtenstein consistently maintained that he was not in a position to discuss any proposition so long as he remained in the employ of American Investment Company.

11. On May 24, 1954, Lichtenstein ceased to be Executive Vice President of American Investment Company. On May 26, 1954, and May 27, 1954, he had meetings with I. H. Levy and others, including Allen E. Nix and defend-
ant Harris, two of the three Liberty directors repre-
198 senting the Class A shareholders. During the course of these meetings Lichtenstein's coming with Liberty was discussed, along with the possibility of a purchase by him of one-half of the Levy family holdings of Class B common stock. Such a purchase was determined to be unacceptable to either party because the balance of control would be left in the small number of shares not owned by either I. H. Levy or members of his family or by Lichtenstein. I. H. Levy then decided that he would not sell less than all of his holdings of Class B common stock.

12. Subsequently a group of investors, mostly from St. Louis, Missouri, was formed, and the purchase of 7,241 shares of Class B common stock of Liberty owned by I. H. Levy and members of his family for the price of $1,700,000, $881,000 payable in cash and the balance evidenced by notes fully collateralized, was negotiated on behalf of such group by Lichtenstein with Levy. These negotiations were carried on and the subsequent purchase

was consummated at arms' length and not as a part of any scheme between Lichtenstein and I. H. Levy, as charged in the Complaint or otherwise.

13. Key Finance Company, a Missouri corporation, was incorporated on or about July 2, 1954. Its stockholders were the above mentioned group of investors. An aggregate of 47% of the stock of Key Finance Company was owned originally and at the time of trial by two
199 sons and the wife of Lichtenstein, 9.7% of such stock was owned by William A. Gerard, 9.7% by Defendant Lyle S. Woodcock, and 5.5% by Anthony A. Buford (the last three being directors of Liberty who were elected to such directorships on July 20, 1954). Full information as to this stock ownership was contained in the proxy statement of September 21, 1954. Lichtenstein has never been a stockholder, director or officer of Key Finance Company, nor has any of the other Defendants except Woodcock, who was and is a stockholder.

14. On July 8, 1954, options to purchase an aggregate of 7,241 shares of Class B common stock were granted to said Key Finance Company by I. H. Levy and his wife, Louis Strilky (his brother-in-law), Harriet Levy (his daughter), and H. H. Levy (his brother) and members of the latter's family. These options related only to an outright purchase, without any contingency, condition or limitation, from I. H. Levy and the other grantors of said options of the 7,241 shares of Class B common stock of Liberty, for the aggregate price of $1,700,000. On July 19, 1954, Key Finance Company exercised said options and purchased unconditionally and became the owner of said 7,241 shares of Class B common stock without any commitment or agreement by anyone that the Class B

common stock would be reclassified or exchanged for any other stock of Liberty.

200 15. On July 20, 1954, at a special meeting of the board of directors of Liberty four members of the then existing board, Louis Strilky, H. H. Levy, F. S. Diebler, and Defendant D. S. Nerad, resigned and William A. Gerard, Anthony A. Buford, and Defendants David B. Lichtenstein and Lyle S. Woodcock were elected to fill the vacancies. Gerard and Woodcock had been officers of American Investment Company and each had had long experience in the small loans business and were part of the management being provided by Lichtenstein to Liberty. These resignations and elections occurred prior to any other business considered at the meeting, except the amendments of by-laws and the election of I. H. Levy as chairman of the board.

16. At the same meeting both Gerard and Woodcock were elected as Vice Presidents and Lichtenstein was elected President of Liberty. Also, the office of Chairman of the Board was created, and I. H. Levy was elected Chairman to serve until the next annual meeting of directors. His compensation was fixed at an annual rate of $40,000 to commence August 1, 1954. At the same meeting his resignation as President was accepted and his salary for that office, which had been $65,300 for 1953,

201 terminated.

17. At the same meeting of July 20, 1954, the Employees' Stock Purchase Plan was unanimously adopted by the directors. It provided for the issuance of up to 115,000 shares of Class A common stock, under an installment payment program providing for payments over a period of not exceeding five years, to officers and employees (or members of their families or family trusts) determined by the directors to be key employees in carrying out the future expansion and growth of Liberty.

18. The shares issued under said Plan were party paid and assessable shares, although the purchaser, upon issuance, was vested with full and complete title. Such shares carried the right to vote the same as fully paid shares but were restricted as to dividends so as to receive only the proportionate part of dividends declared and paid in proportion to the amount paid in on the shares. Rights of such shares upon liquidation were similarly restricted. The Plan provided for payments as follows: an aggregate amount equal to $1 for each share purchased payable at the date of purchase; an aggregate amount equal to $1 for each share purchased due one year after purchase;
202 an aggregate amount equal to $1.50 for each share purchased due two years after purchase; a like amount due three years after purchase; an aggregate amount equal to $2 for each share purchased due four years after purchase; and a final installment in the aggregate amount equal to the balance remaining unpaid with respect to all shares purchased due five years after date of purchase.

19. The Plan also provided that no shares could be assigned or transferred except by operation of law until after the lapse of the period of thirty days from and after the time the shares purchased had become fully paid and non-assessable shares. The first payment made by any purchaser was to be applied ratably toward the purchase price of all of the shares purchased; subsequent payments were to be applied upon and towards the full payment of the purchase price of as many of the shares being purchased under the Plan as such payments should suffice so that the largest number of partially paid shares should become fully paid or as nearly fully paid as possible by each such payment.

20. No purchaser could anticipate any one or more of the installments or make payments in excess of the aggregate amount of each thereof until Liberty, for a period

203 of six consecutive calendar months, should have had consolidated net income, as defined in the Plan, equal to 90¢ per share (which would reasonably insure the continuation of payment of the pre-existing annual dividend on the Class A common stock of $1.50) on all fully paid Class A common stock and Class B common stock and on all partly paid and assessable shares which were to become fully paid by reason of the excess or advance payment, and a proportionate amount on all partially paid Class A common stock which was not to become fully paid by reason of the excess or advance payment.

21. Both the Plan itself and the resolution of the board of directors adopting same provided that the Plan should be submitted to the stockholders at either a special meeting or at the next annual meeting thereof and that the Plan should terminate and be rescinded unless approved and authorized at such meeting by the holders of a majority of each class of the then outstanding stock.

22. The Employees' Stock Purchase Plan was adopted by the board of directors for the purpose of attracting and keeping new management for Liberty and, more specifically, the new management headed by defendant Lichtenstein; to encourage executives and other employees to obtain an investment interest in the enterprise; and to secure greater incentives for outstanding services to the corporation.

204 23. Initially, the board of directors authorized the issuance of 93,600 shares of Class A common stock under the Employees' Stock Purchase Plan, which shares were issued on July 20, 1954, to officers and to certain key employees, some of whom were proposed by I. H. Levy and the remainder by Lichtenstein. Of these shares, Lichtenstein and members of his family, or trusts of which they were beneficiaries, were allotted and purchased an aggregate of 68,600 shares, Woodcock was allotted and pur-

chased 9,500 shares, and Gerard was allotted and purchased 9,500 shares, all of which information was set forth in the proxy statement of September 21, 1954, Plaintiff's Exhibit three (3) herein.

24. No shares have been issued under the Employees' Stock Purchase Plan other than the 93,600 shares hereinabove referred to, which were issued at the total price of $17 per share payable as described in finding No. 18. This price for these restricted shares was reasonably related to the market value of fully paid and unrestricted shares of Class A common stock for the period from June 1 to and including July 20, 1954, that the bid price on July 20, 1954 was 20½ and the asked price on said date was $21¾, during which period from June 1 to July 20 the bid quotations ranged from 18½ to 20 and the ask quotations ranged from 19¾ to 21¾. It was also reasonably related to the book value of the fully paid and unrestricted Class A common stock which, as stated in the proxy statement 205 of September 21, 1954, was $16.45 at June 30, 1954.

The remaining 21,400 shares can be issued only at such price or prices as the board of directors of Liberty may determine, but not less than $17 per share.

25. No proof was adduced by plaintiff that the action of the board of directors of Liberty in adopting said Employees' Stock Purchase Plan, in recommending the same to stockholders, in allocating shares thereunder and in fixing the price for such shares, was not in good faith or was in any way fraudulent or unfair.

26. At the July 20, 1954, meeting a possible merger of Metropolitan Loan & Investment Company and Metro Finance Co. with and into Liberty was discussed and Lichtenstein, as President, was authorized to enter into agreements with said companies looking toward such merger. The first discussions that Lichtenstein had had with any

representatives of either Metropolitan or Metro concerning a possible merger with and into Liberty occurred on July 11, 1954. A formal Plan and Agreement of Merger was entered into between the three companies involved, dated as of September 1, 1954, to be deemed an agreement only upon, among other things, due adoption thereof by the stockholders of the three companies. A copy thereof was submitted to the stockholders with the proxy statement of September 21, 1954. On September 1, 1954 the directors of Liberty approved this Plan and
206 Agreement of Merger (hereinafter sometimes called "Merger"), authorized its execution and the submission of the same to a vote of the stockholders.

27. No proof was adduced by the plaintiff that the action of the board of directors of Liberty in approving said Merger and recommending and submitting the same to a vote of the stockholders was not taken in good faith or was in any way fraudulent.

28. This Merger provided, among other things, for a reclassification of the 7,500 shares of Class B common stock of Liberty into 100,000 shares of common stock of the surviving corporation, being on an exchange ratio of 13⅓ shares of new common for each share of Class B, and the exchange of Class A common stock of Liberty for new common on a share for share basis, thereby leaving the surviving corporation with only one class of stock, each share having full voting power on all matters.

29. The necessity for eliminating the Class B stock with the consequent transfer of control of Liberty from that stock to all of the stockholders as a single class, in order to attract and keep and build up top flight management and key personnel, and to give to Liberty the other advantages set forth in the proxy statement flowing from such elimination, was recognized by Lichtenstein in

his early discussions and later negotiations with I. H. Levy. The stockholders were advised in the proxy statement that the reclassification on the 13⅓ for one basis
embodied in the proposed merger had been discussed
207 during the negotiations for the purchase of the Class B
common stock by Key Finance Company from I. H. Levy and members of his family, and that the three continuing directors (I. H. Levy, Allen E. Nix and David S. Harris) were in favor of such a program in view of the necessity of strengthening the management of Liberty, obtaining services of experienced key personnel and the advisability of eliminating the Class B common stock.

30. The Class B common stock, with its control of Liberty which was surrendered in and by the merger reclassification, was entitled to a substantially greater number of shares of the common stock of the surviving corporation per share than the Class A common stock was entitled to receive per share. The reclassification of 7,500 shares of Class B common stock into 100,000 shares of the common stock of the surviving corporation, restricted as to dividends as hereinafter found, was not fraudulent.

31. The exchange ratio, expressed both in terms of 13⅓ shares of new common for one share of Class B common stock and also in terms of 100,000 shares of new common for 7,500 shares of Class B common stock, appears
and in several places in the proxy statement of Sep-
208 tember 21, 1954, along with complete information as
to the price paid by Key Finance Company to I. H. Levy and the other sellers of the 7,241 shares of Class B common stock. The cost of the entire 7,500 shares of Class B common stock (applying the average price paid for the Levy group of shares to the remaining 259 shares) translated into the 100,000 shares of new common would amount to $17.61 per share of such new common, which figure was reasonably related to the market price

and to the book value of the Class A common stock during the period preceding the purchase, being somewhat less than the market price and somewhat greater than the book value.

32. The 100,000 shares of common stock of the surviving corporation exchanged for the Class B common stock of Liberty were restricted as to dividends, receiving only 7½% of the dividends declared and payable on the other shares of such common stock until for a period of six months the consolidated net income of Liberty (as the surviving corporation) and its subsidiaries, as defined and set out in the proxy statement, should have been not less than 90¢ per share on all fully paid shares of common stock outstanding at the end of the period, including the 100,000 shares of stock so restricted, plus a proportionate amount applicable to the partially paid and 209 assessable shares of common stock outstanding at the end of the period. The shares of new common stock issued to the holders of the Class A common stock of Liberty and to the stockholders of Metropolitan and Metro were not so restricted.

33. The proxy statement sets forth correctly on a pro forma basis and upon the assumptions therein stated the effect that such reclassification would have upon the book value of the Class A and the Class B common stocks expressed in dollar figures per share, and the proxy statement also sets forth correctly the effect the reclassification would have on the earnings available for dividends on each class, again expressed in dollar figures per share.

34. There are no misrepresentations of any kind in the proxy statement of September 21, 1954, and there was no omission of any material fact. Full information as to both the Employees' Stock Purchase Plan and the proposed Merger, including the reclassification of the 7,500 shares of Class B common stock of Liberty into

100,000 shares of common stock of the surviving corporation, was presented, in clear and understandable manner, in said proxy statement, which was sent to all stockholders of record on September 21, 1954, together with a formal notice of the stockholders' meeting to be held November 3, 1954, to vote on both of such matters.

35. On November 3, 1954, the stockholders of Liberty voted in favor of both the Employees' Stock Purchase Plan and also the Plan and Agreement of Merger. 382,740 shares of Class A common stock present in person or by proxy, being 86.2% of the Class A common stock (excluding stock sold pursuant to the Employees' Stock Purchase Plan which did not vote on the proposition) and 98.8% of the Class B common stock voted to approve and authorize the Employees' Stock Purchase Plan. Only 3.5% of the Class A common stock and none of the Class B common stock was voted against the approval and authorization of said Plan. 486,938 shares of Class A common stock, including 93,000 shares sold pursuant to the Employees' Stock Purchase Plan, and 7,409 shares of the Class B common stock, being 90.7% of all the shares entitled to vote, voted in favor of the Merger (which included the reclassification of the Class B stock into 100,000 shares of the new common stock). Less than 1% of all the shares entitled to vote were voted against the Merger.

36. The entry of the new management into Liberty, the Employees' Stock Purchase Plan and the proposed Merger, including the reclassification of the Class B common stock of Liberty into a single class, together with the ratio of reclassification of that stock, was widely publicized by newspaper releases, in the Wall Street Journal, and in various financial publications, such as Dow Jones, Moody's Banks & Finance, and Standard & Poor's. The full details of both proposals were set

forth extensively in the Moody's publication dated September 11, 1954, following an earlier summary thereof dated July 24, 1954, and in Standard & Poor's Standard Corp. Records, "Daily News Section" of September 13, 1954.

37. As stated in the Proxy Statement of September 21, 1954, a group of securities dealers was formed by Riter & Co., Edward D. Jones & Co. and Fairman Harris and Company, Inc. for the purpose of soliciting from stockholders of the corporation proxies in favor of the Merger. No decision to organize and use a proxy soliciting group was reached and no fee or division thereof was determined until September 1, 1954. The matter was fully discussed and authority given at the meeting of directors of Liberty on that date. Full information as to all fees to be paid such securities dealers was set forth in the proxy statement, both as to the amount to be paid to the managing group of the dealers and the 15¢ per share payable to dealers for obtaining proxies favorable to the adoption of the Merger. The payment of such fees was not fraudulent, unreasonable or improper.

212 38. There is no evidence that the vote cast by any stockholder in favor of the Plan and Agreement of Merger was in any way affected by or the result of the payment of fees or compensation to any soliciting dealer, or that such vote was cast by any such stockholder other than as the result of the free and independent best judgment of such stockholder. The form of proxy submitted to the stockholders provided for voting for or against both propositions and that where no specific instruction was given, the proxies would vote the shares in favor of both the Employees' Stock Purchase Plan and the Merger. All proxies received were voted in accordance with the instructions of the stockholders.

39. In the last year or two prior to July, 1954 the management headed by I. H. Levy lacked depth of adequate personnel, particularly in properly trained supervisory personnel. During such period Liberty had not progressed and was beginning to decline, both in business volume and earnings, in contrast to the trend of other companies in the industry toward continued and increased growth during such period.

40. When Lichtenstein brought in his new management, he recognized that at least for a transition period it would be good business to retain some or all of the principal executives of the I. H. Levy management. 213 This was accomplished by electing I. H. Levy as chairman of the board and by retaining the services of H. H. Levy and Louis Strilky under term contracts requiring them to continue to do essentially the same duties which they had previously performed.

41. The salaries of I. H. Levy, H. H. Levy and Louis Strilky were substantially reduced. The aggregate reductions enabled Liberty to pay the salaries of the new top management personnel brought in by Lichtenstein without increasing the overhead for executive salaries.

42. The employment arrangements covering the services of I. H. Levy, H. H. Levy, and Louis Strilky, were bona fide arrangements entered into for the purpose of securing actual services to be rendered by them and each of them to Liberty Loan Corporation and for the purpose of preventing them from rendering services to competitors of Liberty. The compensation paid to I. H. Levy, H. H. Levy, and Louis Strilky and each of them was compensation for services actually rendered by them and each of them and was not part of the purchase price of Class B shares sold to Key Finance Company by I. H. Levy and his associates. I. H. Levy has at all times rendered and is still rendering substantial personal serv-

ices as Chairman of the Board of Liberty Loan Corporation. H. H. Levy and Louis Strilky rendered sub-
214 stantial personal services pursuant to their contracts of employment until the respective dates upon which their contracts of employment were terminated.

43. During the period from July 20, 1954 to and including the commencement of the trial of this action, the management headed by Lichtenstein has accomplished a considerable growth on the part of Liberty in its outstandings or accounts receivable (which are the backbone of the company's business), its lines of credit, its scope and size of operations, its earnings and its position in the industry. Also, since July 20, 1954 the market value of the Class A common stock and, since November 3, 1954, of the common stock of the surviving corporation has steadily increased, and in the first eleven days of June, 1956, it was quoted from 32 high to 31½ low on the bid side and 32½ high to 32¼ low on the asked side.

44. Specifically, during this period the outstandings or accounts receivable of Liberty increased from approximately $20,000,000 to $36,500,000, or better than 75%; its number of accounts increased during the same period about 71%; the entire industry increased during said period about 26% whereas Liberty increased about 67%. The earnings of Liberty for the first five months of 1956 have been at the rate of in excess of $100,000 per
215 month, which was fifty per cent higher than Liberty's earnings had ever been.

45. During the same period Liberty increased its bank lines of credit, which are vital to the success and growth of finance companies, from approximately $20,000,000 to $29,000,000. Additionally, Liberty has obtained $6,500,000 of funds from insurance company loans, and at the time of trial had commitments for an additional $8,500,000 of such funds.

46. Also, during the same period, the company increased its offices from 66 to 127, and increased the scope of its business activities from seven states to fifteen at the present time. In 1954 Liberty was about thirtieth in the small loan industry, and at the time of the trial it had increased its position to substantially in the area of tenth.

47. From the evidence it does not appear that any of the defendants entered into a scheme to defraud the former Class A stockholders or Liberty, itself; nor does it appear from the evidence that any of the defendants, singly or in concert, committed any fraud against the Class A stockholders or Liberty.

216 CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties to and the subject matter of this action.

2. Since Liberty Loan Corporation is a Delaware corporation, the issues presented in this action are governed by the law of the State of Delaware.

3. Under the Delaware law, a minority shareholder has a statutory right to object to any proposed merger of his corporation with any other corporation, and to have his stock appraised and the appraised value paid to him by the surviving corporation.

4. Under the law of the State of Delaware where, as here, both the Employees' Stock Purchase Plan and the Plan and Agreement of Merger have received the favorable vote of more than two-thirds of the stockholders, such Employees' Stock Purchase Plan and such Plan and Agreement of Merger are presumed to be fair and cannot be successfully attacked by dissident stockholders except upon a showing of actual or constructive fraud.

5. Neither the Employees' Stock Purchase Plan nor the Plan and Agreement of Merger, nor any of the terms

and provisions of either, nor any action by any of the Defendants herein as shown by the evidence herein constituted actual fraud or amounted to constructive fraud.

217 6. Although the Employees' Stock Purchase Plan was by the Board of Directors of Liberty submitted to the stockholders for termination or rescission, under the law of the State of Delaware the board of directors of Liberty had power and authority to adopt the Employees' Stock Purchase Plan and to issue shares thereunder and to fix the consideration to be received therefor without submitting the matter to a vote of the stockholders.

7. The Plaintiff has failed to establish by the evidence adduced that she or the Class A stockholders whom she represented or Liberty was entitled to any relief against any of the Defendants.

8. The equities of this action are with the Defendants and against the Plaintiff.

Enter and File:

/s/ J. S. Perry
United States District Judge

Chicago, Illinois
September 4, 1956.

218

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

MINNIE KRANTMAN,
Plaintiff,
vs.
LIBERTY LOAN CORPORATION, a Delaware corporation, I. H. LEVY, D. J. HARRIS, DAVID B. ICHTENSTEIN, LYLE S. WOOLLOCK and DAVID S. NERAD,
Defendants.
No. 54 C 1537

NOTICE OF APPEAL
(filed Sept. 20, 1956)

Plaintiff, Minnie Krantman, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the decree of June 20, 1956, dismissing the above cause on its merits for want of equity at the end of plaintiff's case; and appeals from the Order of September 4, 1956, overruling plaintiff's Motion for a New Trial; and appeals from the Order of September 4, 1956, overruling plaintiff's Objections to Proposed Findings of Fact and Conclusions of Law.

Louis Shulman
Burton H. Young
Irwin J. Askow
Richard James Stevens
By /s/ Richard James Stevens
Attorneys for Plaintiff-Appellant

219 United States of America)
Northern District of Illinois) ss:

• • (Caption—No. 54 C 1537) • •

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on the 20th day of September, 1956, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Nash, Ahern and McNally
111 West Washington Street
Chicago 2, Illinois

Dallstream, Schiff, Hardin, Waite and Dorschel
231 S. LaSalle Street
Chicago 4, Illinois

John F. Cashen, Jr.,
190 North State Street
Chicago, Illinois

Pope and Ballard
120 S. LaSalle Street
Chicago 3, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 20th day of September, 1956.

Roy H. Johnson, Clerk
By Gizella Butcher,
Deputy Clerk

(Seal)

225 United States District Court)
Northern District of Illinois) ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the annexed and foregoing are the original papers constituting the record on appeal in the cause entitled: Minnie Krantman, Plaintiff *vs.* Liberty Loan Corporation, a Delaware corporation, I. H. Levy, D. J. Harris, Davis B. Lichtenstein, Lyle S. Woodcock and David S. Nerad, Defendants, No. 54 C 1537 as follows:

Complaint filed October 20, 1954.

Notice filed October 27, 1954.

Order entered October 27, 1954 granting leave to plaintiff to amend complaint.

Supplemental Complaint filed November 9, 1954.

Motion of I. H. Levy, et al., certain defendants to dismiss filed December 10, 1954.

Motion of Liberty Loan Corporation, a defendant to dismiss filed December 10, 1954.

Order entered March 15, 1955 that insofar as the complaint and supplemental complaint embody plaintiff's request for individual relief dismissed for want of jurisdiction—order motion of several defendants to dismiss denied, etc.

Answer of Liberty Loan Corporation, a Delaware corporation, I. H. Levy, D. J. Harris, David B. Lichtenstein, Lyle S. Woodcock and David S. Nerad, filed July 25, 1955.

Amendment to Complaint and Supplemental Complaint filed September 22, 1955.

Brief in support of amendment to complaint and supplemental complaint filed September 22, 1955.

226 Brief in opposition to amendment to complaint and supplemental complaint filed October 12, 1955.

Plaintiff's reply brief in support of her amendment to complaint and supplemental complaint filed October 21, 1955.

Order entered November 10, 1955 overruling contentions of defendants without prejudice to the defendants raising the same matters at the close of all the evidence.

Order entered January 12, 1956 dismissing defendants Anthony A. Buford, William A. Gerard and Allen J. Nix.

Amendment to Answer filed June 8, 1956.

Order of June 15, 1956 admitting Louis Shulman, etc.

Decree entered June 20, 1956 dismissing cause.

Order entered June 20, 1956 taking under advisement plaintiff's motion for new trial.

Plaintiff's motion for new trial filed June 27, 1956.

Plaintiff's Objections to Defendants' Proposed Findings of Fact and Conclusions of Law filed September 4, 1956.

Order entered September 4, 1956 denying plaintiff's motion for a new trial.

Defendant's Proposed Findings of Fact and Conclusions of Law. Received July 9, 1956, and entered September 4, 1956.

Plaintiff's Notice of Appeal filed September 20, 1956.

Appearance of Appellees and attorneys filed October 24, 1956.

Stipulation with true copy of Answer to Amendment to Complaint and Supplemental Complaint attached filed October 24, 1956.

Filed and entered among the records of the said Court in my office, on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 25th day of October, 1956.

Roy H. Johnson, Clerk
By Gizella Butcher,
Deputy Clerk

(Seal)